

Case Summary

Fred Armstrong appeals his sentence for Class C felony operating a motor vehicle after license forfeited for life and Class D felony resisting law enforcement. We affirm.

Issues

Armstrong raises two issues, which we restate as:

- I. whether the trial court abused its discretion in sentencing him; and
- II. whether his sentence is inappropriate.

Facts

At 5:00 a.m., on November 21, 2007, an Indianapolis Metropolitan Police officer observed Armstrong driving eastbound in the westbound lanes of 38th Street in Indianapolis. When the officer attempted to stop Armstrong, Armstrong made a U-turn through a grassy median and entered northbound I-65. Armstrong evaded police, driving up to 100 miles per hour. After approximately five minutes, the officer was able to stop Armstrong's car. Armstrong is an habitual traffic violator whose driving privileges are forfeited for life.

On November 26, 2007, the State charged Armstrong with Class C felony operating a motor vehicle after his driving privileges had been forfeited for life and Class D felony resisting law enforcement. On December 20, 2007, Armstrong pled guilty as charged. Pursuant to the plea agreement, his executed sentence was capped at four years executed. On the driving after lifetime forfeiture conviction, the trial court sentenced Armstrong to six years, with four years executed and two years suspended. On the

resisting law enforcement conviction, the trial court sentenced Armstrong to one and half years executed, which was to be served concurrent to the other sentence. Armstrong now appeals.

Analysis

I. Abuse of Discretion

Armstrong argues that the trial court abused its discretion by not considering his guilty plea as a mitigator. In reviewing a sentence imposed under the current advisory scheme, we engage in a four-step process. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, a trial court must issue a sentencing statement that includes “reasonably detailed reasons or circumstances for imposing a particular sentence.” Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal only for an abuse of discretion. Id. Third, the weight given to those reasons—the aggravators and mitigators—is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

On rehearing in Anglemyer v. State, 875 N.E.2d 218, 220 (Ind. 2007), our supreme court addressed the same issue. Our supreme court acknowledged:

We have held that a defendant who pleads guilty deserves “some” mitigating weight be given to the plea in return. But an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant. And the significance of a guilty plea as a mitigating factor varies from case to case. For example, a guilty plea may not be significantly mitigating when it does not demonstrate the

defendant's acceptance of responsibility . . . or when the defendant receives a substantial benefit in return for the plea.

Anglemyer, 875 N.E.2d at 220-21 (citations omitted) (emphasis added). Therefore, to establish that the trial court abused its discretion, Armstrong must show that the trial court failed to identify a significant mitigating factor. See id.

It would have been preferable for the trial court to have acknowledged Armstrong's guilty plea. However, in exchange for his guilty plea, Armstrong's sentence was capped at four years executed. As the trial court recognized, Armstrong's criminal history is extensive. His criminal history alone would have certainly warranted an eight-year executed sentence on the lifetime forfeiture conviction. Armstrong received a substantial benefit in exchange for his guilty plea. Armstrong has not established that this guilty plea was a significant mitigator.

II. Appropriateness

Armstrong also argues that his sentence is inappropriate given the nature of the offense and the character of the offender. See Ind. Appellate Rule 7(B). Although Indiana Appellate Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id. Armstrong has not met this burden.

Given the nature of this offense, Armstrong's sentence is warranted. Armstrong was not merely operating a motor vehicle without a license and evading police. He was observed driving in the wrong lane on a major thoroughfare. He then made a U-turn, and led police on a chase that included speeds of 100 miles per hour. Although as Armstrong points out his offenses did not involve a victim, violence, or physical injury, they very easily could have. The public safety risk associated with his commission of the offenses alone warrants the sentence.

As for his character, we acknowledge that Armstrong pled guilty soon after he was charged. His criminal history, however, is extensive. Since 1985, Armstrong has been arrested sixty-four times. He has six felony convictions and at least ten misdemeanor convictions. Based on his criminal history and the nature of the offense, Armstrong's six year sentence is appropriate.

Conclusion

Armstrong has not established that the trial court abused its discretion in sentencing him or that his sentence is inappropriate. We affirm.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.